

ILLINOIS  
COMMERCE COMMISSION

**CIWC Exhibit 1.0**

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CHIEF CLERK'S OFFICE

**CONSUMERS ILLINOIS WATER COMPANY**

**DIRECT TESTIMONY OF**

**GARRY L. SEEHAWER**

**Docket 02-0155**

1                                   **CONSUMERS ILLINOIS WATER COMPANY**

2                                   **DIRECT TESTIMONY OF**

3                                   **GARRY L. SEEHAWER**

4                                   **Docket No. 02-0155**

5  
6   **Q.     Please state your name and business address.**

7   A.     Garry L. Seehawer, 5301 E. State St., Suite 217, Rockford, Illinois 61108.

8  
9   **Q.     By whom are you employed and in what capacity?**

10  A.     I am employed by Consumers Illinois Water Company ("CIWC" or the "Company") as  
11         Vice President and Division Manager of the Northern Division of CIWC (Candlewick,  
12         Oak Run and Woodhaven).

13  
14  **Q.     Please state your educational, professional and business background and experience**  
15         **leading up to your current position.**

16  A.     I attended Iowa State University, majoring in Architectural Engineering. I also attended  
17         Drake University and Kishwaukee College and was awarded an Illinois Public Water  
18         Supply Operator Class "A" certificate in 1978. I took additional training at Highland  
19         Community College and Southern Illinois University, and was awarded an Illinois  
20         Wastewater Operators Class "2" certificate in 1982. I have worked in various facets of  
21         the water and wastewater utility business for 28 years, including 14 years in my current  
22         position. Prior to working for CIWC, I was the General Manager of Candlewick Lake  
23         Utilities Co. and the Woodhaven Utilities Co. for 14 years. My 28 years of utility

24 experience includes working in a supervisory capacity in all aspects of the water and  
25 wastewater field including supervision of the construction of various utility projects. My  
26 professional affiliations include the Illinois Section of American Water Works  
27 Association, in which I have served as a District Trustee, and I also sit on the Education  
28 Committee. Other professional affiliations include the Illinois Potable Water Supply  
29 Operators Association, the Miss Rock Operators Association, the KishRock Operators  
30 Association, the Illinois Association of Water Pollution Control Operators, the Water  
31 Environment Association, and the Northwestern Illinois Water Operators Association of  
32 which I am a Past President and Past Secretary.

33  
34 **Q. What are your responsibilities as Vice President and Division Manager of the**  
35 **Northern Divisions of CIWC?**

36 A. I have overall responsibility for the day-to-day operations of the Candlewick, Oak Run  
37 and Woodhaven Divisions. I also assist the President of the Company in developing  
38 goals and objectives for the Company, and in administering policies and procedures as  
39 approved by the Board of Directors of the Company. It is my responsibility to ensure  
40 that these goals and objectives are achieved. I, along with other Company officers,  
41 represent the Company before governmental and regulatory agencies, formulate financial  
42 objectives and budgets and provide the direction necessary to meet those objectives while  
43 remaining within budgetary guidelines. I am part of the management team which  
44 establishes employee levels, working conditions, and safety requirements within  
45 guidelines established by the Board of Directors and the President of the Company. My  
46 responsibilities also include establishing guidelines for negotiation of special contracts. I

47 have the responsibilities associated with providing excellent customer service, developing  
48 and controlling the Company's operating and maintenance and capital budgets, as well as  
49 providing direction in the areas of construction, purchases or other acquisitions,  
50 operation, maintenance and protection of all property, facilities and equipment required  
51 to maintain water quality standards and continuity of service.

52  
53 **Q: Have you previously testified in regulatory matters?**

54 A: Yes. I have testified before this Commission in several proceedings.

55  
56 **Q: Are you familiar with the property, business and operations of the Woodhaven and**  
57 **Candlewick Divisions?**

58 A: Yes, I am.

59 **Q: Are you sponsoring any exhibits in this proceeding?**

60 A: Yes, I am sponsoring Exhibits 1.1 - 1.5.

61  
62 **Q: What is the purpose of your testimony?**

63 A: The purpose of my testimony is to discuss the Company's request for approval of  
64 proposed tariff sheets ("Tariff Sheets") that are being filed to change portions of the  
65 Rules, Regulations and Conditions of Service ("Rules and Regulations") for water and  
66 sewer service and the rate schedules applicable to the Woodhaven and Candlewick  
67 Divisions to provide CIWC with the opportunity to recover certain costs ("Enforcement  
68 Costs") incurred or expended in sustaining and enforcing liens against the property of  
69 customers whose water and sewer bills have gone unpaid for one year or more to recover

the delinquent amounts in protecting the Company's rights in the lien, and in recovering the amounts secured by the lien.

**Q: Please identify the Tariff Sheets.**

A: The tariffs related to the provision of water service are designated as ILL. C.C. No. 47, Section No. 1, First Revised Sheet Nos. 26-27, canceling ILL. C.C. No. 47, Section No. 1, Original Sheet Nos. 26-27 (Rules and Regulations); ILL. C.C. No. 47, Section No. 5, Second Revised Sheet No. 5, First Revised Sheet No. 6, canceling ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 5, Original Sheet No. 6 for Woodhaven; and ILL. C.C. No. 47, Section No. 6, First Revised Sheet No. 5, canceling ILL. C.C. No. 47, Section No. 6, Original Sheet No. 5, for Candlewick.

The tariffs related to the provision of sewer service are designated as ILL. C.C. No. 48, Section No. 1, First Revised Sheet No. 12, canceling ILL. C.C. No. 48, Section No. 1, Original Sheet No. 12 (Rules and Regulations); ILL. C.C. No. 48, Section No. 4, First Revised Sheet No. 4, canceling ILL. C.C. No. 48, Section No. 4, Original Sheet No. 4 for Woodhaven; and ILL. C.C. No. 48, Section No. 5, First Revised Sheet No. 4, canceling ILL. C.C. No. 48, Section No. 5, Original Sheet No. 4, and ILL. C.C. No. 48, Section No. 5, Original Sheet No. 5 for Candlewick. The Tariff Sheets are attached hereto as Exhibit 1.1.

#### **Recovery of Enforcement Costs**

**Q: Please describe the Woodhaven and Candlewick Divisions.**

A: CIWC currently provides water and sewer service to 6,157 lots located in Woodhaven and 2,332 lots located in Candlewick. In Woodhaven, these lots consist of campsites

with no permanent homes constructed thereon. In Candlewick, the lots may either be undeveloped or improved with residences.

**Q: How is service provided to these two Divisions?**

A: The pipes and mains to all lots in each Division were constructed by the original developers so that water and sewer services are available to customers when they connect to and use the system. This availability is not only convenient for the owners of the lots, but also increases the value of the property. The customers who own these lots are served under tariffs that impose charges for the availability of water and sewer service. Availability charges allow the Company to recover the reasonable costs incurred in maintaining the availability of water in the mains and furnishing domestic sanitary sewer service.

**Q: Under what authority is this availability charge imposed?**

A: Under the Declarations of Covenants, Conditions and Restrictions ("Declarations") applicable to each lot in Woodhaven and Candlewick, each lot owner agrees to pay the availability charges for water and sewer service. Copies of the Declarations for both Woodhaven and Candlewick are attached hereto as Exhibits 1.2 and 1.3, respectively.

The relevant provisions of the Declarations are referenced in the tariff sheets approved by the Commission that impose these charges. See Woodhaven tariffs ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 2 (water); ILL. C.C. No. 48, Section No. 4, Original Sheet No. 2 (sewer), and Candlewick tariffs ILL. C.C. No. 47, Section

No. 6, Original Sheet No. 2 (water); ILL. C.C. No. 48, Section No. 5, Original Sheet No. 2 (sewer).

**Q: What has been the Company's experience in collecting availability charges?**

A: During past years, certain of the lot owners in both Woodhaven and Candlewick have failed to pay the availability charges for the water and sewer services provided by CIWC (the "Defaulting Owners"). Furthermore, the number of such owners has increased each year. In Woodhaven in 2001, of the approximately 6200 lots billed, over 1200 have accounts that are more than ninety (90) days in arrears. The total amounts of these past due accounts, approximately \$448,000, represents almost 30% of the total annual revenues billed for Woodhaven. In Candlewick, 250 accounts are delinquent for a total of \$142,000 owed for 2001.

**Q: Why can CIWC not just write-off or forgive these amounts?**

A: CIWC cannot simply write these amounts off without suffering adverse financial consequences. The past due accounts are recorded as Accounts Receivable (Account Number 141), and the Company has not written off the amounts for book, tax, or rate-making purposes.<sup>1</sup> Unless action is taken, the Defaulting Owners will still be in possession of the properties and will presumably continue to default on bill payments.

Forgiveness of the debt would only aggravate the problem as it would create an incentive for non-payment. The Company's paying customers are required, in effect, to

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<sup>1</sup> In early 2001, CIWC's auditor, Price Waterhouse Coopers, determined that the Accumulated Reserves for Uncollectible Accounts (Account Number 143) for the Woodhaven and Candlewick Divisions were inadequately reserved due to the age of the Accounts Receivables. Effective as of December 31, 2001, the reserves for

137 subsidize non-paying customers and bear the consequences of the Company's decreased  
138 financial strength. Given the amounts owed on the delinquent accounts, paying  
139 customers would face a significant increase in rates if the delinquent balances are  
140 expensed and the increased level of uncollectible expense is reflected in rates at the time  
141 of the next rate case of the Woodhaven and Candlewick Divisions.

142  
143 **Q: What has CIWC done to collect these past due amounts?**

144 A: The Company has used all reasonable means to collect these past due charges. CIWC has  
145 sent notices to the Defaulting Owners, stating that the Defaulting Owners have failed to  
146 pay these charges and has obtained judgments against certain of the Defaulting Owners.  
147 Due to the high cost of pursuing individual court actions, however, the use of this remedy  
148 has heretofore been limited. Also, traditional means to encourage compliance are not  
149 effective in these areas. As noted above, many of these lots are not improved with  
150 permanent residences or other structures. As a result, a termination of water service often  
151 does not encourage payment.

152  
153 **Q: How does CIWC propose to address the problem of uncollectibles?**

154 A: CIWC intends to implement a program that will standardize the process of filing a lien  
155 and pursuing foreclosure actions on lots that have past due accounts ("Foreclosure  
156 Program"). The Foreclosure Program will allow the Company to more efficiently pursue  
157 Defaulting Owners and recover the funds owed.

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(continued...)

uncollectible expense were increased. The amounts of the increases in the reserves, however, were not deducted for tax purposes.



**Q: Under what authority will CIWC do this?**

A: CIWC is authorized by the Declarations and the existing Rules and Regulations, ILL. C.C. No. 47, Section No. 1, Original Sheet No. 26 (water); ILL. C.C. no. 48, Section No. 1, Original Sheet No. 12 (sewer), to file a lien against the property of Defaulting Owners and foreclose on those parcels in order to collect the amounts due.

The Declaration for Woodhaven Lakes (Amended), provides that the charges for service set forth in the tariffs and Rules and Regulations shall become a lien on each property as of the date the charges become due and payable. In addition, the tariffs for Woodhaven authorize CIWC to file a lien against the property of anyone who is delinquent in the payment of water or sewer bills. ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 5 (water); ILL. C.C. No. 48, Section No. 4, Original Sheet No. 4 (sewer).

The tariffs for Candlewick also authorize CIWC to file a lien against property in the development that is owned by any party who is delinquent in the payment of water or sewer bills. ILL. C.C. No. 47, Section No. 6, Original sheet No. 5 (water); ILL. C.C. No. 48, Section No. 5, Original Sheet No. 4 (sewer). The Declaration for Candlewick refers to CIWC's right to collect availability charges for services and/or file a lien against property for non-payment as well.

**Q: Please describe the foreclosure process.**

A: The Company must go through numerous steps as provided under the Illinois Mortgage Foreclosure Act ("IMFA"), 735 ILCS 5/15-1101 *et. seq.*, in order to perfect its lien and foreclose on a property. Among other things, lien notices must be filed against each of

the lots owned by a Defaulting Owner against which foreclosure proceedings will be commenced. CIWC would have to obtain ownership and lien searches from a title company for each lot prior to initiating the foreclosure process. Notice of default must be sent to the owners of the properties. The Company must then go through the foreclosure litigation. This civil action includes the filing of complaints, affidavits of unknown owners, affidavit and notice as to non-record claimants, notice of publication, and notice of foreclosure before a final judgement is reached. CIWC must then petition for a judicial sale of the applicable lots, a procedure that is statutorily controlled.

**Q: Is an attorney necessary in implementing and enforcing a foreclosure?**

A: Yes. The foreclosure process is a detailed and time-intensive procedure. As detailed above, implementing and enforcing a foreclosure can require, *inter alia*, the preparation and filing of complaints and other legal documents, procuring and preparing documentary evidence, and appearances before the court. To properly perform these activities, it is necessary for CIWC to retain the services of an attorney.

**Q: What is the expected amount of the Enforcement Costs?**

A: As discussed previously, the Enforcement Costs associated with pursuing individual lawsuits on an intermittent basis has been prohibitive. CIWC's Foreclosure Program will standardize the process and enable the Company to prosecute multiple foreclosure actions simultaneously. The actual cost for each foreclosure will depend on such factors as the scope of the work involved, whether past due accounts are settled prior to foreclosure, and the length of any court proceeding. However, CIWC estimates (under the

standardized procedures) that the Enforcement Costs will be on average approximately \$500 to \$550 per lot. A breakdown of these costs is shown in Exhibit 1.4.

**Q: How will the extent of these costs affect the Foreclosure Program?**

A: With no mechanism currently in place providing CIWC with an opportunity to recover its necessary Enforcement Costs, foreclosures are, of necessity, limited. Given the cost to pursue a Defaulting Owner, without the ability to recover Enforcement Costs, an account must be in arrears for several hundred dollars before it is feasible to pursue a foreclosure action. At lower delinquency amounts, Enforcement Costs could be greater than the amount due for water and sewer service. Thus, many may continue to default on their accounts without facing any real consequences.

**Q: What is CIWC proposing as a means of potentially recovering these costs?**

A: The IMFA allows a plaintiff to include a request for recovery of attorneys' fees and other costs incurred in connection with the preparation, filing, or prosecution of foreclosure suits in a foreclosure complaint when the right to seek such recovery is specifically set forth in a written agreement between the parties. 735 ILCS 5/15-1510. The Rules and Regulations set forth the terms and conditions under which CIWC will provide service and, in this respect, constitute the agreement between CIWC and customers. Accordingly, addition to the Rules and Regulations of the language contained in the Tariff Sheets is necessary if CIWC is to have the opportunity to seek recovery of its Enforcement Costs before the court when the Company forecloses on the properties of

226 Defaulting Owners. Actual recovery of those costs would rest with the discretion of the  
227 court, which would consider the equities of each foreclosure case.

228 Specifically, CIWC proposes to change portions of the Rules and Regulations for  
229 water and sewer service and the rate schedules applicable to Woodhaven and Candlewick  
230 to provide CIWC with the opportunity to recover from Defaulting Owners the  
231 Enforcement Costs incurred or expended in sustaining and enforcing a lien against  
232 property to recover delinquent water and/or sewer bills, in protecting the Company's  
233 rights in the lien, and in recovering any of the amounts secured by the lien. This amount  
234 will be secured by and become a part of the lien on the property and will be prior to any  
235 subsequent claim. The Company proposes to limit its recovery of Enforcement Costs to a  
236 maximum of \$1,200.00, in addition to the balance of the delinquent water or sewer bill or  
237 any other past due amounts for water or sewer service.

238  
239 **Q: Why not propose to recover Enforcement Costs in rates?**

240 **A:** It is a matter of fairness. Under CIWC's proposal, the Enforcement Costs are paid by  
241 those who are delinquent in their bill payment and are thus responsible for the increased  
242 costs incurred by the Company. Including Enforcement Costs for recovery in rates would  
243 spread the costs to all customers and force those who pay their bills to subsidize those  
244 who do not. CIWC's proposal seeks to place the costs on the responsible parties while  
245 benefiting those customers who do pay their bills through the improved financial strength  
246 of the Company.

249 **Q: What benefit will recovery of Enforcement Costs have?**

250 A: The ability to collect these Enforcement Costs will benefit the public through the positive  
251 rate effect and the improved company financial position that will result from the efficient  
252 collection of delinquent accounts. The Company will benefit because the Foreclosure  
253 Program will be more efficient and effective. CIWC will be able to pursue the accounts  
254 with lower overdue balances (although CIWC will not pursue a foreclosure action until  
255 bills for a given property are at least one year in arrears). In 2001, accounts with unpaid  
256 balances below \$600 comprised over 29% of the total Accounts Receivable in  
257 Woodhaven, and over 28% of the total Accounts Receivable in Candlewick.  
258 Additionally, CIWC will be able to recover more of the delinquent amounts from all of  
259 the accounts because portions of the proceeds from the foreclosure sale will not have to  
260 be expended on Enforcement Costs.

261 Nor will the collection of Enforcement Costs impose an unfair burden on the non-  
262 paying lot owners. It is these customers who, by their non-payment, cause the costs to be  
263 incurred. Moreover, it is the court that ultimately decides whether the Defaulting Owner  
264 has a valid defense, and whether litigation fees and costs should be awarded.

265

266 **Housekeeping Modification**

267 **Q: Are any other changes being made to the existing tariff sheets?**

268 A: Yes. In the Rules and Regulations for both water and sewer service, there is a provision  
269 for charging a water or sewer disconnection/reconnection fee and a provision for  
270 charging a late payment fee for delinquent water or sewer service bills. The language of  
271 these provision is duplicated in the Miscellaneous Charges section of the sewer rate  
272 schedules for Candlewick and Woodhaven and in the water rate schedule for Candlewick.

273 In Woodhaven's water rate schedule, however, while mention is made of the  
274 Rules and Regulations, which contain the provisions that impose these charges, that  
275 language is not duplicated in the Miscellaneous Charges section of Woodhaven's water  
276 rate schedule. Therefore, in order to make the language of the Woodhaven rate schedule  
277 for water consistent with the other rate schedules, the terms of the late payment and  
278 disconnection/reconnection fees are also being added to the Woodhaven rate schedule for  
279 water service, ILL. C.C. No. 47, Section No. 5, First Revised Sheet No. 5. This added  
280 language is found on ILL. C.C. No. 47, Section No. 5, Second Revised Sheet No. 5,  
281 which is included with the Tariff Sheets in Exhibit 1.1.

282 Moreover, because of the language that is being added, some of the original tariff  
283 sheet language will run onto other sheets, thereby requiring the filing of new tariff pages.  
284 These pages are identified as: ILL. C. C. No. 47, Section No. 1, First Revised Sheet No.  
285 28, canceling ILL. C.C. No. 47, Section No. 1, Original Sheet No. 28 and ILL. C.C. No.  
286 48, Section No. 1, First Revised Sheet Nos. 13-14, canceling ILL. C.C. No. 48, Section  
287 No. 1, Original Sheet Nos. 13-14. These pages are attached as Exhibit 1.5.

288  
289 **Q: Does this conclude your testimony?**

290 **A: Yes.**